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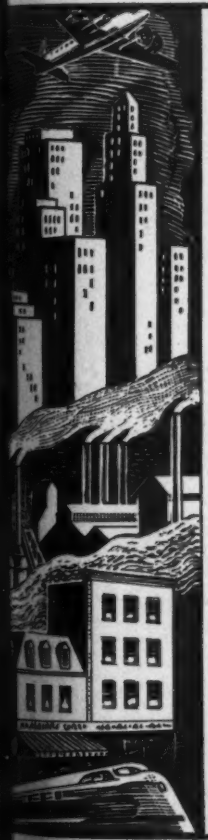

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OCTOBER—NOVEMBER 1952

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doing business in canada

The Northwest Territories

LYING TO THE NORTH of the Canadian Provinces are the Northwest Territories of Canada. They extend east from the Yukon Territory to Greenland and include all the islands in the Canadian Arctic archipelago. They consist of three districts—Mackenzie, Keewatin and Franklin—and have a population of 16,004.

Legislation of the Dominion Parliament (Chapter 142 of the Revised Statutes of Canada, which will become Chapter 46 of the Statutes of 1952) provides for the government of the Northwest Territories. The administration of the Territories is the responsibility of the Commissioner of the Northwest Territories, who is also the Deputy Minister of Resources and Development. There is a Northwest Territories Administration in the Department of Resources and Development. The legislative body of the Territories is the Northwest Territories Council, consisting of five members appointed by the federal government, and three elected by the residents of the Mackenzie district. The seat of government is in Ottawa; there is a District Administrator at Fort Smith, N.W.T., and Sub-District Administrators at Yellowknife, N.W.T., Hay River, N.W.T., and Aklavik, N.W.T., there is an agent of the Northwest Territories Administration at Edmonton, Alberta.

Business or occupation license fees are imposed upon those who carry on business in the Northwest Territories. Applications are made to the Director of the Northern Administration and Lands Branch, Department of Resources and Development at Ottawa, and payment is made to the Commissioner of the Northwest Territories. These are filed upon commencing business and are renewable, annually, on or before March 31. Separate fees are prescribed for various kinds of businesses, there being about 40 different classifications. General merchants, for instance, are taxed $25, as are merchants selling petroleum products in bulk. Agents who have no place of business in the Northwest Territories, who take orders for commodities, pay the following fees; residents, $25; non-residents, $100.

Those engaging in mining operations in the Northwest Territories comply first with Dominion licensing requirements and then with Territorial requirements. An application is first made by letter to the Secretary of State of Canada at Ottawa for a license to permit carrying on such operations in the Territories, under Sections 199 to 203 of the Companies Act (1934) of Canada, designating a statutory agent, accompanied by a certified copy of the charter and by a fee graduated according to the capital stock of the corporation. This license does not need to be renewed annually. Such license permits a corporation to apply for and obtain a Miner's License under the provisions

of the Northwest Territories Quartz Mining Regulations. There is no prescribed form of application for the Miner's License. The applicant writes to the Director, Northern Administration and Lands Branch, Department of Resources and Development, Ottawa, giving the details of its capitalization, in order that a fee, based upon the value of the authorized shares, may be calculated. The Miner's License is renewable, annually, on or before March 31.

Income taxes imposed by the federal government are payable by residents of the Northwest Territories in the same way as by residents in other parts of Canada and this is true whether the tax in question is a personal income tax or an income tax on a person or corporation with an established place of business in the Territories. The provisions of the Tax Convention between Canada and the United States apply, when relevant.

domestic corporations

DELAWARE

Stock option plan enjoined; profit-sharing plan, not legally adopted by directors, ruled voidable and subject to ratification by stockholders.

In *Kerbs et al. v. California Eastern Airways, Inc.*, 83 A. 2d 473, (The Corporation Journal, December 1951—January 1952, page 44), a profit-sharing plan, approved by three disinterested directors and five interested directors, which had not been submitted to and ratified by the stockholders of defendant corporation until after the decision was rendered, was upheld by the Court of Chancery under circumstances where the by-laws provided for a quorum of three directors. The court also gave consideration in that case to plaintiffs' contentions that a stock-option plan, approved by the stockholders, under which five directors and certain officers and employees were the beneficiaries, was invalid for lack of consideration. After an examination of the plan, the court concluded that, viewed alone, it was not invalid for lack of consideration under the circumstances.

Upon appeal, the Supreme Court of Delaware has ordered the judgment of the Court of Chancery dismissing the action to be reversed and directed the Chancellor to permanently enjoin the granting of any option or options pursuant to the stock option plan. The court concluded that the plan before it was deficient in that there were no conditions reasonably insuring that the corporation would receive the contemplated benefits.

As to the profit-sharing plan, approved by three disinterested directors and five interested directors, and ratified by the stockholders after the decision of the Chancery Court had been rendered, the State Supreme Court ob-

served that "the plan failed to receive a legal majority of the directors' votes in its favor," as it is the general rule that the votes of interested directors of a corporation will not be counted in determining whether proposed action has received the affirmative vote of a majority of the board of directors. The court felt, however, that this adoption of the profit-sharing plan by the board was voidable only, not being in the absolutely void classification of actions which are *ultra vires*, a gift of corporate assets to directors, illegal in purpose or fraudulent. A majority of the shares of the corporation having voted in ratification of the action of the directors in adopting the profit-sharing plan, the higher court directed the Chancellor "to deny the application for an injunction prohibiting the paying or distributing of any money under the said profit-sharing plan if, after such further proceedings as may be required, the Chancellor finds as a fact that the action of the holders of a majority of the defendant's stock at the stockholders' meeting held October 10, 1951, effectively ratified the adoption of said plan by the directors."

Kerbs et al. v. California Eastern Airways, Inc., 90 A. 2d 652. Arthur G. Logan and Stephen E. Hamilton, Jr., of Logan, Marvel & Boggs of Wilmington, for appellant. David F. Anderson of Berl, Potter & Anderson of Wilmington and Walter R. Barry, James E. Hughes and George F. Mason, Jr., of Coudert Brothers of New York City, for appellee. Commerce Clearing House Court Decisions Requisition No. 479510.

On August 28, 1952, the Supreme Court of Delaware denied a petition for re-argument in this case and ordered a mandate issued forthwith in accordance with its original opinion. The court refused, in connection with the petition for re-argument, to permit the corporation to take a position diametrically opposite to that previously adopted, by arguing that the stock option plan was intended as a means of payment for past services, and not as an inducement to the optionees to remain in the corporation's employ in the future.

Amendment, cutting off preemptive rights, upheld; restricted stock option plan review.

In *Gottlieb v. Heyden Chemical Corporation*, 83 A. 2d 595, (The Corporation Journal, December 1951—January 1952, page 44), a minority stockholder sought to have declared invalid an amendment to defendant's certificate of incorporation divesting the stockholders of preemptive rights to certain stock. The amendment had been approved by an affirmative vote of the holders of a majority of the common stock. The Court of Chancery had ruled that the rights in question were within the classification of rights permitted to be changed by amendment under Section 26 of the General Corporation Law and concluded that they were legally cut off on the basis of the authority of that section. Upon appeal, the Supreme Court of Delaware has reached a like conclusion to the effect that authority for the proposed amendment was clearly conferred by the statute.

In the Chancery Court, the plaintiff minority stockholder had also sought to enjoin a restricted stock option plan adopted by the defendant corporation with the approval of a majority of the stockholders. The Chancery Court declined at that stage to dispose of the case on summary judgment, feeling, in view of a conflict in the respective positions of the parties, that the true picture

would be required to be developed upon final hearing. The Supreme Court of Delaware, after reviewing the terms of the stock option plan and noting that there was question raised regarding legal consideration for the plan, observed that there must be consideration for the granting of an option, and that, if this matter should go to trial, (and the court so remanded the cause), "it is open to defendant to prove by parol that there is consideration which is referred to in the recitals of the contracts only in the most oblique way." The court regarded neither plaintiff nor defendant as entitled to summary judgment on a question as to the presence or absence of consideration which had a value reasonably related to the concessions made by the corporation. The judgment of the Court of Chancery was reversed and the cause remanded for trial.

Gottlieb v. Heyden Chemical Corporation, 90 A. 2d 660. Robert C. Barab of Wilmington, for plaintiff—below, appellant. Richard F. Carroon of Berl, Potter & Anderson of Wilmington, and Harmon Duncombe and George Rowe, Jr., of New York City, for defendant—below, appellee. Commerce Clearing House Court Decisions Requisition No. 479511.

On August 29, 1952, the Supreme Court of Delaware, acting upon petitions by both parties for re-argument of certain aspects of this opinion, ruled that "an order may be submitted permitting amendment to the original petition for re-argument, fixing a schedule for the filing of briefs, and setting a date for the oral argument." The court noted that "the petitions and their supporting briefs reveal that both parties have taken the opinion to decide matters which we had no intention of deciding and, what is worse, to decide them according to views we do not entertain. Moreover, neither party agrees with the other as to what the court did." The court indicated it would consider Para. 2046, Revised Code of Delaware, 1935, as to its possible application to stock options of the character under consideration, and as to its possible application to ratification by stockholders.

Where corporation conveyed title to land in 1905 with reversion to it if abandoned, and where abandonment occurred after its dissolution in 1940, court rules possibility of reverter became enlarged to fee simple in the trustees of dissolved corporation.

In *Addy et al. v. Short et al.*, 81 A. 2d 300, (The Corporation Journal, October, 1951, page 4), the Superior Court of Delaware held that a Delaware corporation which was voluntarily dissolved in 1940, was not empowered to acquire any title, subsequent to dissolution by reason of a deed which it executed in 1905 under which it conveyed real estate to the Federal Government with a reversion to it if abandoned, under circumstances where the abandonment of the property occurred after the date of dissolution.

Upon appeal, the Supreme Court of Delaware has stated the question thus: "The essential question presented is whether, after voluntary dissolution of a Delaware corporation and after the expiration of the statutory three-year winding up period, the corporation is yet sufficiently alive to retain title to that species of interest in land known as a possibility of reverter." The court,

after an examination of the pertinent statutes and court decisions, concluded: "We hold that neither the dissolution of the Improvement Company nor the expiration of the three-year period worked an extinguishment of the possibility of reverter retained by the deed of August 31, 1905, and that upon the abandonment of the land by the United States the possibility was enlarged to a fee simple title. As statutory successors to the rights and powers of the corporation, plaintiffs are now entitled to maintain their action." The judgment of the Superior Court was, therefore, reversed.

Addy et al. v. Short et al., 89 A. 2d 136. Everett F. Warrington and Caleb M. Wright of Georgetown, for plaintiffs, plaintiffs in error. James M. Tunnell and Samuel R. Russell, of Tunnell & Tunnell, of Georgetown, for defendants, defendants in error.

NEW YORK

Stockholder's application to have accountant make monthly examinations of corporate books and records denied by court.

In a minority stockholder's derivative action, brought against a family owned corporation, its officers, directors and controlling stockholders, plaintiff sought various types of relief, included among which was a request that her accountant be permitted to make monthly examinations of the corporate books and records. It was not disputed that a short time before the bringing of the suit, the defendants had voluntarily permitted the plaintiff's accountant to examine all the books and records of the corporation. The New York Supreme Court, Special Term, Kings County, Part I, in denying this application, observed: "Another examination within such a short period of time cannot be permitted."

Rabinowitz v. Steinberg et al., 112 N. Y. S. 2d 758, Nathan B. Fogelson of New York City, for plaintiff. Guzik & Bouckstein of New York City, for defendants.

RHODE ISLAND

Statute, placing limitations on right of corporation to enter into contracts with corporation having a common director or directors, construed.

The plaintiff New York corporation and the defendant Rhode Island corporation originally entered into negotiations looking toward the manufacture by defendant of certain hardware products for the plaintiff. Later, it was thought that a third intermediate corporation would provide a means of raising new capital for the venture, and for equitably distributing anticipated profits between the stockholders of plaintiff and defendant and perhaps that it would also achieve certain income tax advantages. This third corporation was organized as a New York company, its stock to be issued to the stockholders

of each company, so that the ownership of the new corporation would be equally divided between the two groups. Actual control of the new company, however, as previously agreed upon, was placed in the group represented by the plaintiff through the placing of certain stock in a voting trust. At the initial stockholders' meeting of the third corporation, five directors were elected. Two were directors, also of the defendant. The plaintiff group elected the other three directors, two of whom were also directors of the plaintiff. Thus, although the two end corporations, the plaintiff and the defendant, had no common directors, the new middle corporation had two directors in common with the plaintiff and two in common with the defendant.

Early in September 1947, officials of the three corporations signed a tripartite written contract under seal, upon which this suit was brought. Preparations for the manufacture of articles according to models and plans delivered by plaintiff to defendant never progressed beyond the stage of the development of working samples by the defendant. At that point, and without notice to plaintiff or to directors of the intermediate corporation, steps were taken toward the liquidation of defendant, plaintiff learning of the pending liquidation through a newspaper announcement. Soon after suit was brought for damages for breach of contract and for other relief. Six months later, which was more than eighteen months after the contract had been signed, the defendant's stockholders formally voted that the contract be "disaffirmed, disapproved and voided."

The United States District Court for the District of Providence, Rhode Island, gave judgment for the defendant corporation and individual defendants. The court, although regarding plaintiffs as entitled to relief, felt this could not be granted by reason of Chapter 116, Art. II, Section 21, General Laws, 1938, which places limitations upon the power of a corporation of Rhode Island to enter into contracts with a corporation having a common director or directors, if the contract is entered into in good faith and is approved or ratified by a majority vote at any meeting of its board of directors. Upon appeal, the United States Court of Appeals, First Circuit, vacated this judgment, being "loath to conclude that the Supreme Court of Rhode Island would hold that the general terms of the statute make it applicable in the circumstances here disclosed."

Duncan Shaw Corp. et al. v. Standard Machinery Co. et al., 196 F. 2d 147. William H. Edwards (John L. Clark and Edwards & Angell, on brief), of Providence, for appellants. Fred B. Perkins (James A. Higgins, Perkins, Higgins & McCabe and Elisha C. Mowry, on brief), of Providence, for appellees.

foreign corporations

CALIFORNIA

Unlicensed foreign corporations distributing their products through local distributor, held "doing business" so as to be subject to service of process made upon Secretary of State.

Service of process upon the Secretary of State as agent of two foreign corporations in an action in the Superior Court had been quashed, on the apparent basis that the two defendants were not doing business in the state at any time prior to the proceedings. By petition to the District Court of Appeal, First District, Division 2, it was sought to have the order of the Superior Court set aside and to have that court required to take jurisdiction.

The two corporate defendants below were affiliated in the business of manufacturing and distributing pharmaceutical goods, having their principal places of business in Buffalo, New York. The manner of distribution was through a distributor. In California, the distributor was one of the plaintiffs below, a wholesaler, who, by contract, agreed to distribute the goods of defendants throughout California and other western states. He was the sole distributor for these goods there. Title remained in the corporation until the goods were sold. This plaintiff warehoused the goods and carried insurance on them in his own name. The corporations set the prices and required a report of stock on hand each month. They provided all the advertising for their products and had no offices in California. It did not appear whether retailers' or consumers' orders were subject to approval by the corporations in New York, but they never were in fact rejected. The contract provided that the distributor was considered by the parties to be an independent contractor.

The question being whether the corporations were doing business within the state within the meaning of the Corporations Code and to the extent that assumption of jurisdiction over them was consistent with due process, the court concluded: "Any distinction as to where, exactly, interstate commerce ends and local commerce begins seems to be largely immaterial in deciding the precise problem at hand. Whether the particular business of these corporations is denominated intra or inter state commerce does not change the fact that they are still doing business in this state. That distinction only poses the other question of burden on interstate commerce, which is not raised here, nor which would seem plausible if it were. We are satisfied that a liberal and reasonable view of the question of jurisdiction calls for a holding that the plaintiff and petitioner herein should be accorded the right to try out in the courts of this state the issues raised in his complaint. Accordingly the trial court should vacate its order quashing service of summons and reinstate the pleadings for a trial on the issues of the controversy."

Fielding et al. v. Superior Court in and for City and County of San Francisco, 244 P. 2d 968. Emmett R. Bruns and

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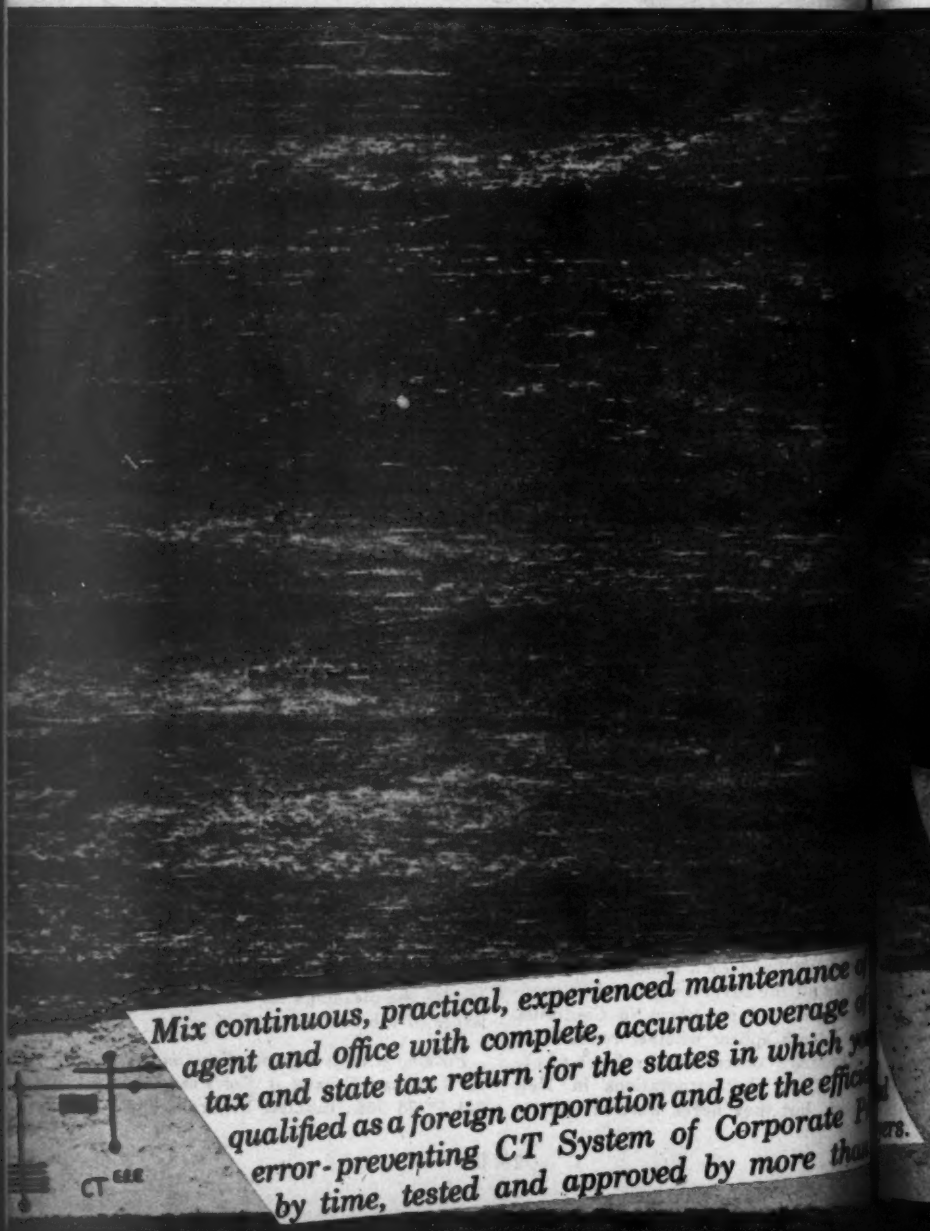

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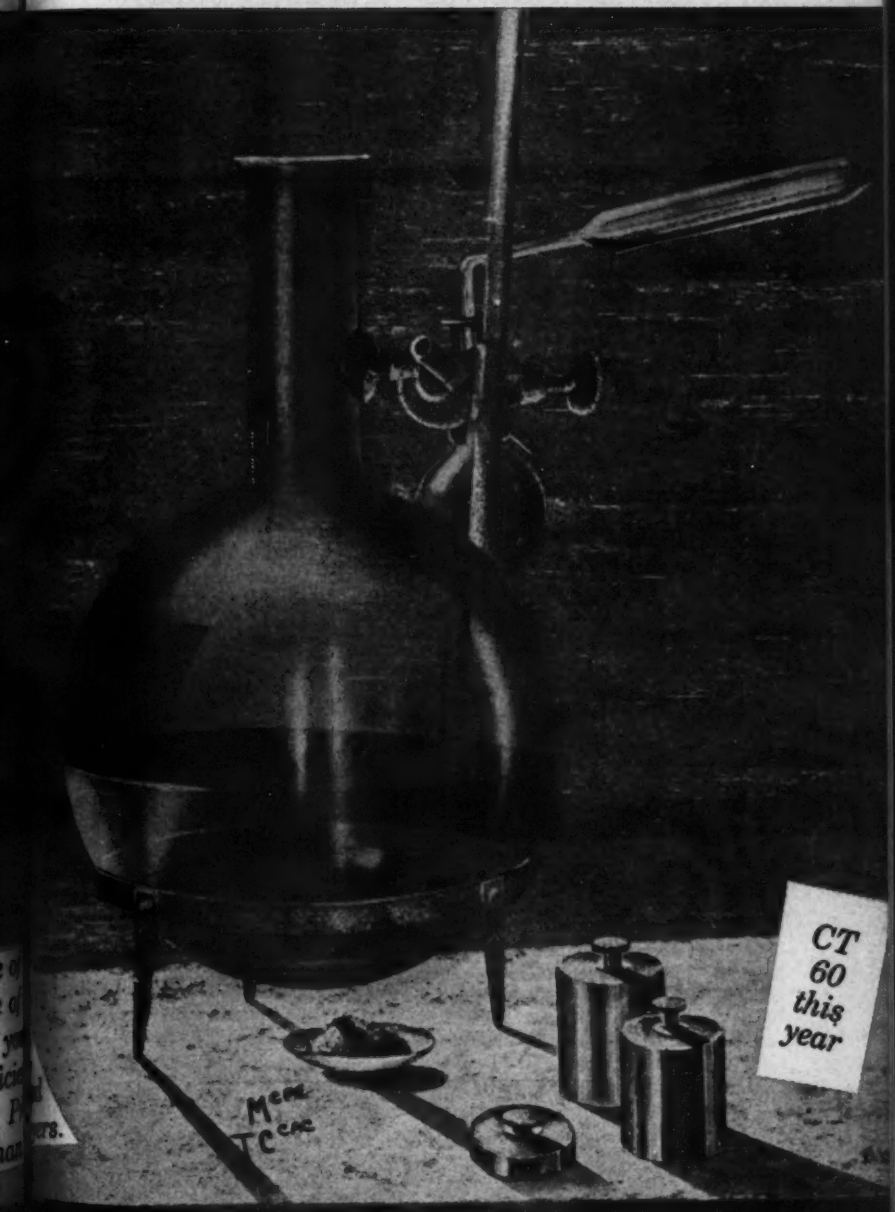
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Edward A. Friend of San Francisco, for petitioner. John Fielding, Jr. Hoberg & Finger of San Francisco, for petitioner Dolph Obergfel. Hagar, Crosby, Crosby & Vendt, of Oakland, for respondent and real party in interest.

ILLINOIS

Unlicensed corporation engaged in interstate commerce ruled not required to be qualified in order to sue in Federal Court.

Plaintiff Virginia corporation entered into an agreement with defendant whereby the latter became the exclusive selling agent of plaintiff's product in northern Illinois. After a number of orders had been filed, the arrangement between them broke down. In an action involving breach of the contract in the United States District Court, Northern District of Illinois, Eastern Division, defendant moved to dismiss the complaint on the ground that plaintiff was a Virginia corporation which was doing business in Illinois without having secured a certificate of authority to do so from the Secretary of State, and for that reason was not permitted to maintain this action. Affidavits and counter-affidavits indicated plaintiff was engaged in interstate commerce.

In its original Memorandum and Order, the court granted defendant's motion to dismiss the complaint, basing its conclusion upon decisions in which a defendant was attempting to avoid defending a suit. Subsequently, however, by a second Memorandum and Order, the court vacated its dismissal Order, upon motion of the plaintiff. The court observed: "The term 'doing business' has a different meaning when considering a state's right to tax or license than when considering service of process by state courts. See *Pergl v. U. S. Axle Co.*, 320 Ill. App. 115. In the 'service of process' problem, it makes no difference that the corporation is engaged solely in interstate commerce, as long as it is doing business within the State so as to render it present therein. However, the fact that a corporation is engaged exclusively in interstate commerce removes it from the ambit of the licensing provisions of the Illinois Business Corporation Act, regardless of whether or not it is doing business within the State. In other words, before it shall be bound by the licensing provisions of the Illinois Act, it must be engaged in intrastate commerce as such, and not merely doing business within the State."

Lincoln Industries, Inc. v. Carl T. Mason Co.,* United States District Court, Northern District of Illinois, Eastern Division, September 25, 1951 and March 14, 1952. Madigan & Thorsen of Chicago, for plaintiff. Wm. Arthur Ward of Chicago, for defendant. Commerce Clearing House Court Decisions Requisition No. 477248.

* The full text of this opinion is printed in the **State Tax Reporter**, Illinois, page 533.

MASSACHUSETTS

National bank whose travelers' checks were sold through local agency, ruled not doing business and empowered to sue.

A question raised concerned a national bank and its right to sue in the United States District Court for the Massachusetts District. Section 5 of Chapter 181 of the General Laws of Massachusetts provides, in part, that no action shall be maintained or recovery had in any of the courts of Massachusetts by any foreign corporation so long as it fails to obtain authority to do business. Section 24 of 12 U.S.C.A. includes among the powers of national banks the power "to sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons." The court indicated that Chapter 181 would be unconstitutional if applicable to national banking corporations, but, favoring the constitutionality of the state statute, concluded and ruled that as a matter of law, Chapter 181 was not intended to apply to national banking institutions.

Another question concerned whether plaintiff national bank was doing business in Massachusetts so as to be required to be qualified. Plaintiff, in California, issued travelers' checks in various denominations. These were sent to defendant in Massachusetts, to be sold to the public on a commission basis. The court concluded that the relationship between the plaintiff and defendant was one of agency and that plaintiff was not doing business within Massachusetts so as to be required to be qualified there.

Bank of America v. Lima d.b.a. Lima Travel Agency et al.,* United States District Court for the Massachusetts District, March 21, 1952. Commerce Clearing House Court Decisions Requisition No. 478496.

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* The full text of this opinion is printed in the **State Tax Reporter**, Massachusetts, page 508.

Service on unlicensed foreign corporation in federal suit, not related to business done in state, set aside where it was effected upon a state official under a special statute.

Plaintiff New Hampshire resident instituted a libel suit, based on diversity of citizenship, in a Massachusetts Federal court against an unlicensed Iowa corporation on a cause of action not arising out of business done by the defendant in Massachusetts. Service of process was effected upon the Commissioner of Corporations and Taxation of Massachusetts under Section 3A, Chapter 181, General Laws, as agent for unlicensed foreign corporations doing business in the state.

The United States District Court, District of Massachusetts, in allowing the motion to quash the service of process, noted that Section 3A makes the commissioner agent for service only where the cause of action arises out of business done within Massachusetts, and ruled that the service of process was not authorized under that section.

Nichols v. Cowles Magazines, Inc., 103 F. Supp. 864. Nathan Moger and Fitzpatrick & Moger of Boston, for plaintiff. J. N. Welch and Hale & Dorr of Boston, for defendant.

NEW YORK

Director, not a stockholder, of a foreign corporation engaged principally in defense work, ruled not entitled to inspect books and records without first obtaining necessary security clearance from proper federal agency.

Petitioner, a director but not a stockholder, of respondent, an Ohio corporation, claimed an "absolute right" to inspect and make extract copies of the books and records of the company, under Section 10 of the Stock Corporation Law. It was undisputed that approximately 92% of the company's work was concerned with the national defense program. The corporation had offered to comply with petitioner's demand but insisted that he first obtain the necessary security clearance from the proper federal government agency, which the petitioner had declined to do. The company resisted the demands of the petitioner upon the grounds: (a) that petitioner was affiliated with, and had given financial and other support to, persons and organizations of a Communist nature, and his access to respondent's records was prohibited under the Espionage Law and governmental security regulations unless petitioner received security clearance from the government; (b) that this proceeding was part of an attempt by petitioner to extort money from directors of respondent corporation for reasons entirely personal to the petitioner and unrelated to any of his duties to the corporation as a director.

The New York Supreme Court, Special Term, New York County, Part I, in denying petitioner's motion and dismissing the proceeding without prejudice to its renewal when and if security clearance was granted to the petitioner by the proper governmental agency, ruled that his claim, as a director, to an absolute right to inspect and copy the records of the corporation, under Section 10 of the Stock Corporation Law, was without merit, observing: "Section 10 confers certain qualified rights upon *stockholders* of *domestic* corporations. Petitioner is a director (not a stockholder) of a *foreign* corporation. Incidentally, Section 113 of the Stock Corporation Law, relating to foreign corporations, applies only to *stockholders* of such corporations." The court also remarked: "Even at common law, and without statutory authority, courts have zealously guarded against the disclosure through judicial proceedings of information relating to the national defense." "The common law rule against disclosure of such information has now been embodied in the federal Espionage Law, which makes it a criminal offense for anyone who has possession of documents or information relating to national defense to communicate the same to 'any person not entitled to receive it.' 18 U. S. C. Section 793 (d), 18 U. S. C. A. Section 793 (d). The statutory language of the Espionage Law should be given a broad interpretation, *Gorin v. U. S.*, 312 U. S. 19, 28, 61 S. Ct. 429, 434, 85 L. Ed. 488, as it expresses a public policy which must override the rights of private litigants."

Posen v. United Aircraft Products, Inc., et al., 111 N. Y. S. 2d 261. Henry K. Chapman of New York City, for petitioner. Hays, Podell, Algase, Crum & Feuer (Mortimer Hays, of counsel) of New York City, for respondent.

Service of process set aside where made upon person not a managing agent of a foreign aviation company which operated between points outside the United States.

Defendant, a foreign corporation organized under the laws of the Colony of Malta, engaged in air transportation principally in the area of the Mediterranean Sea, appeared specially and moved to vacate and set aside service of summons upon it on the grounds that it was not doing business in the State of New York and that the person served was not a managing agent of the defendant. Its contact with New York was through an agreement with a New York corporation, to which it chartered an aircraft with crew, fully outfitted for carrying fifty-two passengers, for certain scheduled flights from Bermuda to Rome and from Rome to Bermuda, with two additional flights between Bermuda and the United Kingdom. The agreement provided that it was to be construed according to the laws of England and that any action arising thereunder should be brought only in a court of the United Kingdom. By a subsequent agreement, which was in effect for three months, the New York company became the Malta Company's agent for the sale of tickets on all of the defendant's scheduled routes and for the purpose of entering into charter agreements for aircraft operated for or in behalf of the defendant. The New York company maintained office addresses on behalf of the defendant in New York, which were shown on certain letterheads, with telephone numbers.

The New York Supreme Court, Monroe County, concluded that, on the facts disclosed, the defendant was not doing business in New York so as to be subject to service of process. It also ruled that the plaintiff failed to show that the person upon whom service was made was a managing agent of the defendant at the time service was made. Ruling that the service was made improperly, the motion to vacate it was granted.

Great Lakes Press Corp. v. Air Malta, Ltd.,* 111 N. Y. S. 2d 802. Naylon, Foster, Shepard & Aronson, George Foster, Jr., of counsel, attorneys for defendant, appearing specially for the motion. David Schoenberg, Frank G. Wittenberg, of counsel, attorney for plaintiff, opposed.

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* The full text of this opinion is printed in the **CCH New York Corporation Law Reporter**, page 9868.

Service of process on unlicensed foreign navigation company, on cause of action arising overseas, set aside.

The defendant unlicensed British corporation moved to vacate service of summons upon it upon the ground that it was not present within the jurisdiction. It was a shipping company which maintained service from England intermediate European ports to the Far East and Australia. Its ships did not enter any port in New York or anywhere in the United States. Its principal offices were located in London and it did not appear that it had any directors, officers or employees who resided within the state of New York. It maintained no office

or place of business in New York and had no bank account or property in the state. The case involved a contract of carriage which was executed and performed entirely without this country and wholly across the sea. Service of process was made upon a corporation with local offices which acted as general passenger agent for the defendant, and which had arranged for passenger and freight transportation in defendant's vessels in trips between foreign countries. The City Court of the City of New York, New York County, granted the motion to vacate service of summons and complaint and dismissed the action for lack of jurisdiction of the defendant.

Gertsenstein v. Peninsular & Oriental Steam Navigation Company, 113 N. Y. S. 2d 360. Bernstein, Weiss, Tomson, Hammer & Parter, Abraham Bloom, of counsel, of New York City, for plaintiff. Lord, Day & Lord, Leonard Leaman, of counsel, for defendant, appearing specially.

OHIO

Service of process upheld where made on president of unlicensed Philippine corporation in connection with cause of action not touching Ohio.

In *Perkins v. Benguet Consolidated Mining Co. et al.*, 155 O. S. 116, 98 N. E. 2d 33, (The Corporation Journal, June, 1951, page 349), the Ohio Supreme Court ruled that an unlicensed foreign corporation, was not subject to service of process in a cause of action not touching Ohio. The Supreme Court of the United States, when this suit was brought before it, concluded that the Ohio courts were free, so far as Federal due process was concerned, to determine whether or not to accept jurisdiction over this company, a Philippine corporation, in suits not touching its Ohio activities, where the president who was served, directed its activities from Ohio during the occupation of the Philippines. (*Perkins v. Benguet Consolidated Mining Company*, 72 S. Ct. 413, (The Corporation Journal, April-May, 1952, page 89), petition for rehearing denied 72 S. Ct. 645.)

The judgment having been vacated and the cause remanded by the Supreme Court of the United States, the Ohio Supreme Court, upon further consideration has directed that trial court should overrule motions to quash the service of summons. The court remarked: "This court does not presume to hold that any single fact here disclosed is conclusive evidence of doing business in this state. But the court does hold that the cumulative effect of the uncontroverted facts is such as to constitute a clear legal status of doing business here, and hence there is no apparent reason for favoring the corporation by granting it immunity from the jurisdiction of the courts of this state."

Perkins v. Benguet Consolidated Mining Co. et al., 158 O. S. 145. Gorman, Silversteen & Davis, for appellant. Ely, White & Davidson, Nichols, Speidel & Nichols and Lucien H. Mercier, for appellees.

taxation

DISTRICT OF COLUMBIA

Board of Tax Appeals of District rules as exempt from use tax materials used in private construction purchased or rented prior to adoption of use tax law, and certain items incorporated into Federal and District projects.

Petitioner, a Pennsylvania contracting corporation, complained of use taxes assessed by the Assessor in relation to the use by the petitioner of materials and equipment in connection with the construction of three large building projects in the District of Columbia, one for a private owner, one for the United States and one for the District of Columbia. The assessment, based upon a use tax return supplied under protest by the petitioner, was for the month of September, 1949, and was paid under protest. No sales tax was paid on or in relation to any of the property and services involved.

One contested imposition related to the tax as applied to metal forms rented by the petitioner under a contract dated two months before the use tax went into effect which were used in connection with the erection of the building for the private owner. The Board of Tax Appeals found this item to be exempt under a statutory provision. The Board also ruled as exempt, under a Board regulation, items physically incorporated into projects for the District of Columbia government or the Federal government, including incidental waste, and also form ties partly physically incorporated when the petitioner erected a building for the Federal government.

*John McShain, Inc. v. District of Columbia,** Board of Tax Appeals of the District of Columbia, June 25, 1952. M. M. Doyle and Fred J. Rice, for petitioner. Harry L. Walker, for the District.

* The full text of this opinion is printed in the **District of Columbia Tax Reporter**, page 6386.

state legislation

Louisiana — Act 443 provides a special method of qualification of foreign corporations for the sole purpose of making mortgage loans or purchasing and owning notes secured by mortgages.

Act 337 provides for the admission in evidence of photographically processed records.

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

OCTOBER 1952 TERM

ILLINOIS. Docket No. 23. *City of Chicago v. The Willett Co.*, 406 Ill. 280, 94 N. E. 2d 195. (The Corporation Journal, June, 1951, page 353.) Municipal license tax on carters transporting property in intracity, intrastate and interstate commerce. **Petition for writ of certiorari filed, January 12, 1951. April 23, 1951: "Per curiam:** The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Supreme Court of Illinois, for clarification by that court to show, in light of *Minnesota v. National Tea Co.*, 309 U. S. 551; *State Tax Comm. v. Van Cott*, 306 U. S. 511, whether the judgment herein rests on an adequate and independent state ground or whether decision of a federal question was necessary to the judgment rendered." (71 S. Ct. 734.) **Petition for rehearing denied, 71 S. Ct. 853.** (Upon remand for clarification, the Illinois Supreme Court stated that its decision in this case was based upon the uncontested evidence that the plaintiff carrier's interstate, intrastate and intercity business is inseparable. For this reason, the ordinance, though valid, cannot be applied to the carrier involved. *City of Chicago v. The Willett Co.*, 101 N. E. 2d 205.) **Petition for certiorari again filed, March 12, 1952. May 5, 1952:** "The motion to use the certified record in No. 493, October Term, 1950, is granted. Petition for writ of certiorari to the Supreme Court of Illinois granted and case transferred to the summary docket." (72 S. Ct. 1033.)

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* Data compiled from **CCH U. S. Supreme Court Bulletin,** 1952-1953.

regulations and rulings

Alabama — Private contractors purchasing property in their own names for use under lump sum or cost-plus-a-fixed fee contracts with the Federal government, are not agents of the Federal government, and are making purchases at retail which are subject to the sales or use tax. (Bulletin, Sales and Use Tax Division, State Tax Reporter, Alabama ¶ 69-502.)

California — The sales tax does not apply with respect to sales of merchandise shipped to a consumer in California from a point outside the state, even though there is a participation in the transaction by a California retailer or by the California office or branch of the out-of-state retailer, providing that title or possession under a conditional sales contract passes to the purchaser at a point outside of California. (General Bulletin 52-5, State Board of Equalization, State Tax Reporter, California, ¶ 60-204a.)

Colorado — Mere advertising in this state by a foreign securities corporation is not "doing business". (Opinion of the Attorney General, State Tax Reporter, Colorado, ¶ .012.)

Florida — Where a woman invites a number of guests for a demonstration meal, at which time she takes orders for the purchase of kitchen and table ware, sending the orders to the nonresident manufacturer of the merchandise, who fills the orders and sends them to the "hostess" for delivery to the customers and collection of the price, she is dealing in interstate commerce and is not subject to an occupational license tax. (Opinion of the Attorney General to the State Comptroller, State Tax Reporter, Florida, ¶ 39-058.)

Where a citizen of Florida exhibits merchandise offered for sale by a nonresident merchant and takes orders from residents of Florida, which orders are sent to such nonresident merchant for acceptance and delivery of the goods directly to the purchaser, such salesman is not required to obtain a Florida occupational license. (Opinion of the Attorney General to the State Comptroller, State Tax Reporter, Florida, ¶ 39-059.)

New York — A membership corporation cannot be formed for purposes essentially of a business nature, such as ownership, maintenance, improvement and operation of common utility systems of heat, water, electricity, etc., for the mutual benefit of individual owners of housing units. (Opinion of the Attorney General.)

The corporate purpose of receiving, relaying and distributing television and radio broadcasts by wire, cable, etc., requires incorporation pursuant to the Transportation Corporations Law as a telegraph and telephone corporation. (Opinion of the Attorney General.)

North Carolina — When a company's agent, permanently located in the state, solicits orders for goods manufactured by the company outside of the state, and the goods are sent directly to the purchasers, the company is "engaged in business" in this state within the meaning of the use tax statute and is required to collect the use tax. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 65-009.)

some important matters

For October and November

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

California — Quarterly Retail Sales Tax Return and Payment due on or before October 31.—Domestic and Foreign Corporations.

Connecticut — Quarterly Retail Sales Tax Return and Payment due on or before October 31.—Domestic and Foreign Corporations.

Georgia — Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

Indiana — Quarterly Gross Income Tax Return and Payment due on or before October 31.—Domestic and Foreign Corporations.

Iowa — Quarterly Retail Sales Tax Return and Payment due on or before October 20.—Domestic and Foreign Corporations.

Louisiana — Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

Maryland — Quarterly Return of Tax withheld at source due on or before October 31.—Domestic and Foreign Corporations.

Missouri — Quarterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

New York — Second Installment of Franchise (Income) Tax of Business Corporations due on or before November 15.—Domestic and Foreign Business Corporations other than real estate companies.

North Dakota — Quarterly Retail Sales Tax Return and Payment due on or before October 20.—Domestic and Foreign Corporations.

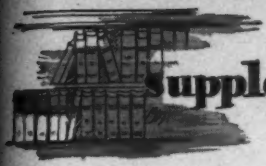
Oregon — Returns of Withholding at the source due on or before October 31.—Domestic and Foreign Corporations.

Rhode Island — Semi-Annual Report to Division of Industrial Inspection during October and April.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

South Dakota — Quarterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

United States — Withholding at source due on or before October 31.—Domestic and Foreign Corporations.

West Virginia — Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before October 30.—Domestic and Foreign Corporations.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

A Pretty Penny . . . Gone! The troubles that descend upon a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted. Also shows how trouble of that nature can be prevented.

Delaware Corporations (1951 Edition). Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

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The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

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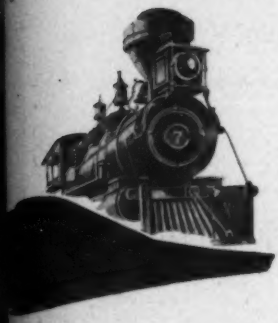

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